

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID PATTERSON and
DENA PATTERSON, as next
friends of DP, a minor child

Plaintiffs,

CASE NO. 05-74439
HON. LAWRENCE P. ZATKOFF

v.

HUDSON AREA SCHOOLS,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Port Huron,
State of Michigan, on the 1ST of February, 2010

On January 29, 2010, this Court issued an Order summarily denying Plaintiffs' Motion to Adjourn Trial Set for February 16, 2010, To Set Reasonable Expert Fees and Other Related Relief. This Opinion sets forth the grounds for the Court's denial of the Motion.

This case was filed on November 22, 2005. At the scheduling conference, the parties asked for and were granted six months for discovery. Thereafter, the parties asked for and were granted two extensions of the discovery period totaling 180 days. Discovery then closed on March 29, 2007. In November 2007, the Court granted the Motion for Summary Judgment filed by Hudson Area Schools and Kathy Malnar. On May 11, 2009, the Sixth Circuit issued a mandate with respect to its reversal of this Court's judgment in favor of Hudson Area Schools (hereinafter, "Defendant").¹

¹Plaintiffs did not appeal the Court's dismissal of Kathy Malnar and Ms. Malnar is no longer a party to this litigation.

Defendant then filed a petition for writ of certiorari with the U.S. Supreme Court. Defendant's petition was denied in early October 2009. After a conference call between the parties' attorneys and my law clerk, the parties agreed to a Final Pretrial Conference of January 21, 2010, jury selection before a magistrate judge on February 11, 2010, and the first day of trial on February 16, 2010. On October 16, 2009, the Court issued to the parties: (a) a Notice of the Final Pretrial Conference, and (b) a Trial Notice that formalized the Final Pretrial Conference, jury selection and trial dates.

On January 26, 2010, Plaintiffs filed their Motion, wherein they asked the Court to adjourn the trial date because of complications involving a deposition for Dr. Rosalind Griffin, a proposed expert witness for Defendant, scheduled for the same date. The primary issue cited by Plaintiffs was the advance payment of the \$3,000 fee demanded by Dr. Griffin for the deposition, a demand Plaintiffs claim to have learned about for the first time on January 25, 2010. In response to that demand, Plaintiffs canceled the January 26, 2010, deposition of Dr. Griffin. On January 29, 2010, Defendant filed a response brief concurring in the request for the adjournment. Defendant also stated that it recently had received a substantial amount of discovery materials from Plaintiffs and that Plaintiffs had identified eight witnesses (who had not previously been disclosed) on the joint final pretrial order submitted by the parties on January 21, 2010.

As stated previously, this case is over four years old. The Court's authorized discovery period, *i.e.*, the discovery period formally ordered and enforced by the Court, closed on March 29, 2007, almost three years ago. In mid-October 2009, four months prior to the trial date of February 16, 2010, the parties agreed to commence the trial on February 16, 2010. In other words, the parties have had more than ample time to conduct discovery, both formally pursuant to the Court's orders

and informally pursuant to agreement(s) between the parties. The Court also notes that it has an established and full calendar, including a number of other trials, for the next several months. Therefore, there is not an available alternate date for trial in this matter in the near future.

Accordingly, for the reasons stated, the Court is not persuaded that the interests of justice warrant granting an adjournment of trial at this time for what, in essence, is an additional period to conduct discovery. To the extent that the parties can agree on conducting discovery at this time, the Court encourages them to do so. Discovery issues, however, including the payment of fees to an expert witness, are not matters for consideration for the Court on the eve of trial.

Accordingly, for the reasons set forth above, Plaintiffs' Motion to Adjourn Trial Set for February 16, 2010, to Set Reasonable Expert Fees and Other Related Relief is DENIED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: February 1, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on February 1, 2010.

S/Marie E. Verlinde
Case Manager
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